

# Calendar No. 1938

82D CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 2014

## LEGAL GUARDIAN OF WILLIAM MOONEY

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JULY 1 (legislative day, June 27), 1952.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H. R. 3705]

The Committee on the Judiciary, to which was referred the bill (H. R. 3705) for the relief of the legal guardian of William Mooney, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to pay the sum of \$1,000 to the legal guardian of William Mooney, of 431 West Twenty-fifth Street, Manhattan, New York, N. Y., in full settlement of all claims against the United States on account of the injuries sustained by said William Mooney on August 26, 1943, when he was struck by a United States Coast Guard truck while said truck was on the sidewalk abutting upon 439 West Twenty-fifth Street, Manhattan, New York, N. Y.

#### STATEMENT

On the date of the accident, William Mooney was a child 5 years old, living on the north side of Twenty-fifth Street, between Ninth and Tenth Avenues, New York City. At that time, the Coast Guard Chelsea Encampment was located in the same block, and abutted on the north sidewalk of Twenty-fifth Street from Tenth Avenue eastward for about half the block. The location is in a thickly populated tenement district. Between August 11 and September 24, 1943, the Coast Guard used the following procedure to service its trucks at the Chelsea Encampment. The trucks to be serviced were parked at the north curb of Twenty-fifth Street, headed west. A supply truck, sent by the Coast Guard garage, Brooklyn, N. Y., then pulled up

onto the north sidewalk (15½ feet wide) of Twenty-fifth Street, and proceeded slowly westward, stopping beside each parked truck until it had been serviced, then moving on to the next truck. The truck used as a supply vehicle was a stake-body Dodge truck. It carried six portable drums of gasoline, one drum of oil, and tire pressure equipment, and was equipped with a rubber hose and pump, by means of which gasoline was transferred to the tanks of the parked trucks. The reason given for servicing these trucks from the sidewalk was that the openings of the gas tanks of the parked vehicles were on the right-hand side, and the hose with which the supply truck was equipped would not reach the openings if the supply truck approached the parked vehicles on their left-hand side.

About 6:30 p. m. on August 24, 1943, the supply truck, driven by Howard C. Rumpf, machinist's mate, second class, USCGR, arrived at the Chelsea encampment to service the parked trucks. Rumpf was accompanied by John R. Hall, fireman, first class, USCGR. After the arrival of the supply truck at the encampment, Howard L. Sherman, fireman, second class, USCGR, was assigned to assist Rumpf and Hall. The supply truck pulled up onto the north sidewalk of Twenty-fifth Street, as usual, and the servicing commenced. Rumpf drove the supply truck. Hall worked the pump on the left-hand side of the supply truck. Sherman opened the tanks of the parked trucks, inserted the nozzle of the hose, and cut off the flow when the tanks were full. Some 17 trucks were thus serviced. As the supply truck moved up to the eighteenth truck, Hall's attention was attracted by the cries of a child, and it was discovered that the right rear wheel of the truck had passed over the right leg of the child, William Mooney. The child was immediately picked up and taken to the transportation office of the encampment. From there he was taken to St. Vincent's Hospital, where examination showed that he had suffered a fracture of the right femur, multiple abrasions and contusions, and laceration of the right groin. The investigation disclosed that a group of young children, including the Mooney child, had gotten onto the right-hand running board of the supply truck to secure a ride as the supply truck moved along the sidewalk from truck to truck. As a result of the playing and jostling of the children on the running board, the Mooney child, who was apparently at the rear end of the running board, was pushed off and sustained his injuries. The Coast Guard personnel involved, being engaged in their duties in connection with servicing these trucks, did not notice that these children had climbed on the right-hand running board of the supply truck.

The information available to the committee indicates that the Mooney child remained in the hospital for 61 days. When he was examined by a Public Health Service physician on November 15, 1943, he was suffering from only a slight lameness, which was decreasing. He had no complaint except that when he walked any distance he had a tired feeling, which was not present before the accident.

The Treasury Department in its report recommending favorable enactment of this legislation states in part as follows:

It seems clear from the report that the Coast Guard personnel had no knowledge that the Mooney child was even in the vicinity of the truck until they heard his outcry when the right rear wheel passed over his leg. However, the Treasury Department is of the view that, if this case were for judicial determination under the Federal Tort Claims Act, there would be a strong probability that a judgment would be rendered against the Government. While Coast Guard personnel may

not have had any actual knowledge as to the presence of the Mooney child on the supply truck, a court might well find that a vehicle of this type, alternately moving and stopping on the sidewalk, on a summer evening in a thickly populated neighborhood, was so unusual as to attract children and tempt them to try to secure rides thereon, and that it was negligence on the part of Coast Guard personnel to fail to anticipate an accident such as actually occurred and to guard against it.

The committee is in agreement with the views expressed by the Treasury Department, and therefore recommends favorable consideration of the bill H. R. 3705.

Attached hereto and made a part of this report are the report of the Treasury Department and other evidentiary data of claimant submitted in connection with this bill.

TREASURY DEPARTMENT,  
*Washington, October 3, 1951.*

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of April 17, 1951, requesting the views of the Treasury Department on H. R. 3705, "For the relief of William Mooney."

The purpose of H. R. 3705 is to authorize the payment of \$1,000 to William Mooney of New York City in full settlement of all claims against the United States because of an injury suffered by the said William Mooney when a Coast Guard truck ran over his right leg on the sidewalk near 431 West Twenty-fifth Street, New York City, on August 24, 1943.

Following this accident, the Coast Guard conducted an investigation. Based upon the report of that investigation, the facts appear to be as follows. On the date of this accident, William Mooney was a child 5 years old, living on the north side of Twenty-fifth Street, between Ninth and Tenth Avenues, New York City. At that time, the Coast Guard Chelsea Encampment was located in the same block, and abutted on the north sidewalk of Twenty-fifth Street from Tenth Avenue eastward for about half the block. The location is in a thickly populated tenement district. Between August 11 and September 24, 1943, the Coast Guard used the following procedure to service its trucks at the Chelsea Encampment. The trucks to be serviced were parked at the north curb of Twenty-fifth Street, headed west. A supply truck, sent by the Coast Guard Garage, Brooklyn, N. Y., then pulled up onto the north sidewalk (15½ feet wide) of Twenty-fifth Street, and proceeded slowly westward, stopping beside each parked truck until it had been serviced, then moving on to the next truck. The truck used as a supply vehicle was a stake-body Dodge truck. It carried six portable drums of gasoline, one drum of oil, and tire pressure equipment, and was equipped with a rubber hose and pump, by means of which gasoline was transferred to the tanks of the parked trucks. The reason given for servicing these trucks from the sidewalk was that the openings of the gas tanks of the parked vehicles were on the right-hand side, and the hose with which the supply truck was equipped would not reach the openings if the supply truck approached the parked vehicles on their left-hand side.

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child was immediately picked up and taken to the transportation office of the encampment. From there he was taken to St. Vincent's Hospital where examination showed that he had suffered a fracture of the right femur, multiple abrasions and contusions, and laceration of the right groin. The investigation disclosed that a group of young children, including the Mooney child, had got onto the right-hand running board of the supply truck to secure a ride as the supply truck moved along the sidewalk from truck to truck. As a result of the playing and jostling of the children on the running board, the Mooney child, who was apparently at the rear end of the running board was pushed off and sustained his injuries. The Coast Guard personnel involved, being engaged in their duties in connection with servicing these trucks, did not notice that these children had climbed on the right-hand running board of the supply truck.

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The information available to the Treasury Department indicates that the Mooney child remained in the hospital for 61 days. When he was examined by a Public Health Service physician on November 15, 1943, he was suffering from only a slight lameness, which was decreasing. He had no complaint except that when he walked any distance he had a tired feeling, which was not present before the accident.

In view of the foregoing, the Treasury Department has no objection to the payment to William Mooney of whatever sum, not exceeding \$1,000, the Congress decides is equitable and fair under the circumstances.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

E. H. FOLEY,  
*Acting Secretary of the Treasury.*

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STATE OF NEW YORK,  
*County of New York, City of New York, ss:*

Mary Ellen Larity, residing at 454 West Twenty-fifth Street in the Borough of Manhattan, city and State of New York, being duly sworn, deposes and says: I am 56 years of age. I am a widow. I have four children; three sons and a daughter. One son is in the United States Army, one is in the United States Navy, my daughter is in the WAVES. My other son is suffering from a heart ailment and lives with me.

On August 24, 1943, at approximately 7 p. m., I was looking out of my front-room window, which faces the property now occupied by the Coast Guard.

I saw several small children playing, and running up and down the sidewalk directly opposite to where I reside. At that time the Coast Guard gas truck was on the sidewalk putting either gas or oil into the trucks which were lined up on the street on the north side of Twenty-fifth Street, and this oil truck was going from car to car.

I suddenly heard screams from these several children, and saw several of them running back along the sidewalk, but I did not see the little light-haired boy. I saw coast guardsmen and others running toward this oil truck which was at a standstill on the sidewalk. I could not see where the boy was, as trucks were parked all along that side of the street. In a short time I saw a man carrying the boy by holding him under the armpits with his feet dangling, the boy was taken toward the entrance. I found out later that the injured boy was named Mooney and lived in 431 West Twenty-fifth Street. I saw Mr. Mooney, the boy's father, and told him what I saw.

This oil truck and others were always running along the sidewalk, but since this accident, they do not run on the sidewalk any more.



The Coast Guard property is between Ninth and Tenth Avenue on West Twenty-fifth Street on the northerly side of the street. The accident happened nearer Tenth Avenue about 100 feet from the northeast corner of Tenth Avenue and Twenty-fifth Street.

The injured boy was not in the roadway at any time I saw him and was not hitching on any truck at the time I saw him.

MARY ELLEN LARITZ.

Sworn to before me this 22d day of January 1944.

[SEAL]

HARRY E. COHEN,

Notary Public for Bronx County.

My commission expires March 30, 1945.

ST. VINCENT'S HOSPITAL,  
New York City, March 27, 1946.

Prepared at the request of Joseph J. Guadagno, Jr., Esq., 320 Broadway, New York 7, N. Y.

Our records show that William Mooney was admitted to this hospital on August 24, 1943, and was discharged on October 23, 1943.

Diagnosis: Fracture lower  $\frac{1}{2}$  shaft, right femur. Multiple abrasions, and contusions. Laceration of right groin.

Five and one-half-year-old white male child admitted with history of having been struck by a car.

X-ray revealed fracture of the femur.

Patient was put up in Bryant traction.

Discharged on the sixty-first hospital day, October 23, to fracture clinic.

Returned to out-patient department on November 4 and 18, 1943. Discharged November 18, 1943.

\_\_\_\_\_, Record Librarian.

NEW YORK, March 27, 1946.

Mr. WILLIAM MOONEY,

431 West Twenty-fifth Street, New York, N. Y.

To St. Vincent's Hospital, Out-Patient Department, New York City:

*Clinic No. 4565-43*

Prenatal care.

First aid treatment.

X-ray examination.

Other treatments: Two visits to surgical clinic, November 4, 1943, and November 18, 1943, \$6.

Transcript of record.

Bill complete.

Received payment

In-patient bill, \$435.40.

## IN THE MATTER OF THE CLAIM OF WILLIAM MOONEY, INFANT BRIEF IN SUPPORT OF CLAIM

### FACTS

On August 24, 1943, William Mooney, aged 5 years, was on the sidewalk abutting upon 439 West Twenty-fifth Street, Borough of Manhattan, city of New York, when he was injured by a United States Coast Guard truck, which then encumbered the sidewalk. The Coast Guard gas truck which struck William Mooney was traveling up and down said sidewalk in order to gas up other trucks which were alined along the curb. The injured William Mooney was taken to St. Vincent's Hospital on August 24, 1943, and remained there until he was discharged on October 23, 1943. He returned to the out-patient department on November 4 and 18, 1943. On November 18, 1943, he was completely discharged from the hospital.

It is well settled that one who encumbers a public sidewalk is chargeable with a nuisance. (*Diener v. N. Y. Central R. R. Co.* (64 N. Y. 407); *Rohlf's v. Weil* (271 N. Y. 444); *Appel v. Muller* (262 N. Y. 278).)

In *O'Rourke v. Castagnola* (283 N. Y. Supp. 927) it is said (syllabus):

"Encroachment in public street of low wooden stakes connected by wire, enclosing grass plot, between sidewalk and building, constituted nuisance as a matter of law."

In *O'Brien v. Guariglia* (7 N. Y. Supp. (2) 394) the defendant was held liable for blocking the sidewalk, thus creating a nuisance and forcing plaintiff to walk in the roadway where he was struck by a passing automobile.

In *Riesenberg v. Cullen Coal Co.* (166 Misc. 663) the defendant was held liable because he created a nuisance by breaking the surface of a sidewalk, causing a pedestrian to stumble and sustain injuries.

A child of such tender age is non sui juris and is not chargeable with contributory negligence (*Verni v. Johnson*, 295 N. Y. 436).

One who is injured on a public sidewalk is never charged with contributory negligence (*Neuhoff v. Rellaw*, 25 N. Y. Supp. (2) 409).

That \$1,000 is exceedingly moderate compensation for the injuries of said infant.

In *Gallagher v. State* (288 N. Y. Supp. 2) an award of \$1,500 for a fracture was held inadequate and was increased to \$5,000.

In *Carballal v. Pilgrim Laundry* \$3,000 was awarded for a laceration.

In *Crotoli v. Met.* \$6,500 was assessed for a laceration with six stitches.

Finally, in assessing such damages at the present time, the devaluation of the dollar must be considered (*Burtman v. State*, 67 N. Y. Supp. (2) 271).

Respectfully submitted.

MICHAEL ZELENKO,  
Attorney for Claimant.

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